

Filed at 11 O'Clock & 12 min. A.m.
Date: 5-1-91
IN THE UNITED STATES BANKRUPTCY COURT

FOR THE
SOUTHERN DISTRICT OF GEORGIA
Augusta Division

IN RE:)	Chapter 13 Case
)	Number <u>90-11861</u>
MILLARD D. ALEXANDER)	
GERALDINE B. ALEXANDER)	
)	
Debtors)	
)	
SWAINSBORO FINANCIAL SERVICES,)	
INC.)	
)	
Movant)	
)	
vs.)	
)	
MILLARD D. ALEXANDER)	
GERALDINE B. ALEXANDER)	
)	
Respondents)	

ORDER

Swainsboro Financial Services, Inc. (hereafter "SFS") objects to debtors' Chapter 13 plan. SFS objects to debtors' valuation of its interest in collateral securing its loan at Five and No/100 (\$5.00) Dollars. SFS contends that the secured value of this collateral is much greater than assessed in debtors' plan, and that debtors' plan is not proposed in good faith.

SFS asserts a nonpossessory, nonpurchase money security interest in debtors' property which consists of a second lien on one

(1) 1979 Toyota Corolla automobile, and a lien on one (1) Amana microwave oven, one (1) Channel Master Satellite TV System, one (1) 19" color TV, one (1) 26" color TV, and one (1) John Deere riding lawn mower.

At the hearing SFS objected to debtors' avoiding SFS' lien against and exempting their satellite TV system (hereinafter referenced "STVS") as a household good pursuant to 11 U.S.C. 522(f) and Georgia statutory exemptions of O.C.G.A. 44-13-100. SFS contends that the STVS is permanently affixed to the property and therefore a fixture. If the STVS is a fixture, it loses its character as personalty and therefore could not be a household good.

The extent and nature of the debtors' interest in property is determined by nonbankruptcy law. 4 King, Collier on Bankruptcy, ¶541.02[1] (15th ed. 1989). Georgia law determines whether the STVS is a fixture. From the evidence presented at hearing a STVS is composed of an exterior dish shaped antenna connected by wires to electronic components located inside the owners premises. In this case the antenna rested upon a pole anchored in the ground. The antenna is readily removable from the pole. The interior electronic components had been destroyed by fire. Georgia Code defines personalty as property which is movable in nature . . . and not realty. O.C.G.A. 44-1-3. Georgia law defines fixture as anything which is intended to remain permanently in place even though

not actually attached to the land. O.C.G.A. §44-1-6. Anything which is detached from the realty becomes personalty instantly upon being

detached. O.C.G.A. §44-1-6(c).

Three factors which the Georgia courts have used in determining whether an object is personalty or realty are

- 1) the degree to which the object has become integrated with or attached to the land;

- 2) the intention of the parties; and

- 3) unity of title.

Walker v. Washington, (In re: Washington), 837 F.2d 455 (11th Cir. 1988). Applying these factors, the antenna is personalty.

The antenna is a component of the STVS and connected through wiring to internal electronic components located in the debtors' house. While the antenna rests upon a pole which is anchored to the land, the antenna remains easily removed. The anchoring system, whether a pole, bracket, or roof top is not part of the STVS. The antenna and remaining components of an STVS may be moved from premises to premises with little difficulty and thus remains personalty.

The intentions of the parties is clear from the loan agreement attached to the allowed proof of claim of SFS. The agreement provides:

SECURITY AGREEMENT

The undersigned [debtors] grants to Lender
[SFS]
a security interest in the following personal
property, together with all accessions: . . .
Channelmaster Satelite (sic) TV System.
(emphasis added).

Additionally, there is no evidence of SFS' perfection of the security interest granted.

There is no evidence whatsoever that there exists any degree of "unity of title between the personalty and the realty." Washington, supra.

As the STVS is personalty, determination must be made whether this item of personalty meets the definition of household goods for exemption and lien avoidance purposes. "[T]his court can see no logical basis for finding that the relevant statutes create two separate meanings of 'household goods' for lien avoidance and exemption." In re: Plummer, Chpt. 7 case No. 87-30162 (Bankr. S.D. Ga. Dublin Division, Dalis, J. July 1, 1988). A household good is defined as

items of tangible personal property held primarily for personal or family use by the debtor or a dependent of the debtor in or about the household, excepting therefrom items held for investment purpose or items having a pecuniary value independent of its functional

Plummer supra. The STVS is an item of tangible personal property held for the personal use of the debtors and their dependents and located about the debtors household. There is no evidence that the antenna has any value independent of its functional use, nor is it held by the debtors for investment purpose. The STVS is a household good.

As it pertains to creditor's objection to the debtors'

valuation, debtors testified as to the value of each item. This court finds the un rebutted testimony creditable. Pursuant to 11 U.S.C. §522(f), the debtors may avoid the nonpurchase money, nonpossessory security interest, if any, held by SFS in debtors' one(1) Amana microwave oven; one (1) Channel Master Satellite TV System; one (1) 19" color TV; one (1) 26" color TV and one (1) John Deere riding lawn mower and exempt these items of property pursuant O.C.G.A. §44-13-100. The debtors' valuation of SFS' security interest in the debtors' 1979 Toyota Corolla at Five and No/100 (\$5.00) Dollars was not disputed.

Regarding the objection to confirmation, SFS contends debtors' plan was not proposed in good faith and was proposed solely for the purpose of defeating the rights of creditors. There is no merit in creditor's argument. This court is charged with the duty of making a case by case inquiry to determine whether the proposed Chapter 13 plan meets the statutory criteria of good faith. In re: Hale, 65 B.R. 893 (Bankr. S.D. Ga. 1986); In re: Steele, 34 B.R. 172 (Bankr. M.D. Ala, 1983). Although a comprehensive definition of good faith is not practical, broadly speaking, the basic inquiry should be whether under the circumstances of the case there has been an abuse of the provisions, purpose or spirit of Chapter 13 in the proposed plan. Kitchen v. Georgia Railroad Bank & Trust Co., 702 F.2d 885 (11th Cir. 1983). The Kitchen decision sets forth basically thirteen factors to be considered on the question of good

faith :

1. The amount of the debtor's income from all sources;
2. The living expenses of the debtor and his dependents;
3. The amount of attorneys fees;
4. The probable or expected duration of the debtor's Chapter 13 plan;
5. The motivations of the debtor and his sincerity in seeking relief under the provisions of Chapter 13;
6. The debtor's degree of effort;
7. The debtor's ability to earn and the likelihood of fluctuation in his earnings;
8. Special circumstances such as inordinate medical expenses;
9. The frequency with which the debtor has sought relief under the Bankruptcy Reform Act and its predecessor;
10. The circumstances under which the debtor has contracted his debts and his demonstrated bona fides, or lack or same, in dealing with his creditors;
11. The burden which the plan's administration would place upon the trustee;
12. The substantiality of repayments; and
13. The potential nondischargeability of debt in a Chapter 7 proceeding.

Applying the debtors' testimony to these factors establishes that debtors' budget is reasonable, their plan payments are regular, the valuation placed upon collateral is reasonable and the debtors were justified in seeking Chapter 13 relief. Under the circumstances debtors have proposed their plan in good faith.

It is hereby ORDERED that Swainsboro's objection to confirmation of debtors' plan is overruled;

further ORDERED that the security interest of Swainsboro Financial Services, Inc. in one (1) Amana microwave oven, one (1) Channel Master Satellite TV System, one (1) 19" color TV, one (1) 26" color TV, and one (1) John Deere riding lawn mower is avoided pursuant to 11 U.S.C. 522(f) as impairing exemptions to which the

debtors are entitled to under state law;

further ORDERED that the debtors' valuation of the secured claim of Swainsboro Financial Services, Inc. in the debtors' 1979 Toyota Corolla automobile at Five and No/100 (\$5.00) Dollars is approved.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 1st day of May, 1991.